



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/170458

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 3, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Marathon County Department of Social Services in regard to Wisconsin Child Care (CC) benefits, a hearing was held on January 7, 2016, at Wausau, Wisconsin. The hearing record was extended for filing of briefs, which were received from both parties.

The issue for determination is whether the agency correctly reduced CC hours for the petitioner's school-aged child effective November 22, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Atty. [REDACTED] County Corporation Counsel  
Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.

2. The petitioner had an ongoing CC case for four children. At least one of the children (LS) is a school-aged child. LS lives within the [REDACTED] public school district, and his appropriate public school has regular hours of 8:00 a.m. – 3:15 p.m. LS does not attend that school for the full school day. He is educated through an online academy, [REDACTED], at a daycare location from 8:30 a.m. to noon. The school district does not pay the daycare for the time that LS is learning through [REDACTED]. He then continues his education and is physically present at [REDACTED] Middle School for home room, art, music, and physical education. Additional daycare services are then utilized after school.
3. The petitioner is employed full-time outside of her home. Her work schedule was 8:00 a.m. through 5:00 p.m. (5:30 on Mondays and Tuesdays), Monday through Friday. It later changed to 8:00 a.m. through 5:00 p.m. on Mondays, Tuesdays, Wednesdays, and Fridays, and 7:00 a.m. through 3:00 p.m. on Thursdays.
4. Per direction from the Wisconsin Department of Children and Families in November 2015, the county agency determined that CC could not be authorized for the hours when the public school location was available for educating LS. On November 23, 2015, the local agency issued a notice (*CC Authorization Information*) to the petitioner, advising that the 62 hour per week authorization for LS would be ending effective November 22, 2015. It was being replaced by an authorization for 23 hours weekly (9 hours at [REDACTED], 14 hours at [REDACTED]).
5. When the petitioner's 23-hour CC authorization for LS ended on December 5, 2015, there was an incorrect lag in the agency's approval of the next round of authorizations. It was fixed by the time of hearing. *CC Authorization Information* notices were mailed to the petitioner on January 11 and February 1, 2016, advising that LS would be authorized for 18 hours weekly, retroactively from December 6, 2015, into June 2016. The petitioner was no longer attending school in the evening, and her work hours on Thursdays had shortened.

### DISCUSSION

The purpose of the Wisconsin Shares Child Care Subsidy (CC) Program is to offer low-income families the ability to work. *Wisconsin Shares Child Care Subsidy Program Policy Manual (Manual)*, § 1.1.1. The program accomplishes this goal by subsidizing a portion of the families' child care costs. *Id.* In order to qualify for CC, families must be financially eligible, parents must be in an approved activity, and children must also be age eligible. *Id.*, § 1.1.4 and 1.1.5.

Funds for the Wisconsin CC program must be expended consistent with the federal regulations, and applicable State and local laws unless the federal regulations supersede these state and local laws. 45 C.F.R. § 98.54 (1-2). Wis. Stat. § 49.155(1m) lists the specific state and local requirements for the Wisconsin CC program. These requirements are more clearly spelled out in the *Manual*. Section 2.2.2 of the *Manual* addresses authorization assessment:

Authorization workers are responsible for evaluating the needs for child care for all family or case types. Care authorizations must be based on an assessment of:

- The number of hours of care each child in the family needs per week to enable the parent(s) to participate in the approved activities, including lunch and break times, and travel time between the work-activity and the child care location
- Overlapping schedules of two parent families
- The appropriate type of authorization (attendance attendance-based or enrollment enrollment-based)
- The length of time child care is needed (up to six months)
- The copayment type

- The child's school schedule
- Shared placement schedules
- Any other factors that impact the need for child care

More importantly, the federal rule at 45 C.F.R. § 98.54(c) specifically imposes the following restriction upon states' use of CC funds:

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

- (1) *Any service provided to such students during the regular school day;*
- (2) Any service for which such students receive academic credit toward graduation; or
- (3) Any instructional services that supplant or duplicate the academic program of any public or private school.

[emphasis added]

In this case the issue is whether the Department correctly denied child care for the petitioner's school-aged child for hours when his school was available for instruction. The petitioner incorrectly argues in her overwrought brief that the Department did not present a specific legal authority prohibiting this type of authorization. She further argues that she meets all of the specific financial and non-financial eligibility requirements. The problem with the petitioner's argument is that she is asking the Department to create a new category of eligibility for online-schooled children who are educated during the regular school day. The Department cannot use federal CC funds for this purpose, as § 98.54(c) forbids a CC expenditure for both "instructional services" such as [REDACTED] tuition (§98.54(c)(3)) and "any service" such as custodial care (§ 98.54(c)(1)) provided during the regular school day.

The current policy and regulations allow the Department discretion in authorizing childcare. This policy directs the workers to consider the number of hours of care each child needs to enable the parent(s) to participate in the approved activities, the children's school schedule, and any other factors that impact the need for child care. A factor present in this case is that public education, charter schools, and vouchers for private schools are options for this petitioner's school-aged child. The petitioner has opted not to take advantage of these education options, and to instead use an online school at a non-school location (*i.e.*, daycare) during the regular school day. She then wants child care subsidies to pay for her child to attend the daycare where she works during the typical school day. It is unclear in this record as to why (1) LS could not study online at the middle school building, or (2) the school district is not paying for the offsite (daycare) instructional location. The Department has assessed these factors, and has determined that the petitioner is not eligible for child care for her school-aged, online-schooled child, *during the regular school day*.

The Department's denial is consistent with the purpose, policy, and regulations of the CC program. This program was not designed to allow a parent to home-school or "virtual school" his/her children. There are separate funds for public education and other education options such as private school vouchers. This program was designed to give lower income persons the ability to work by providing child care assistance. The Department has the discretion to authorize these funds. I find that they have properly used their discretion.

This issue has been addressed in two Final Decisions of the Secretary of the Wisconsin Department of Children and Families. Both Final Decisions agree with the county agency's result in this case. *See*, DHA Decision No. CCB/169252 (Div. of Hearings & Appeals March 17, 2016)(DCF), and DHA Decision No. CCB/169056 (Div. of Hearings & Appeals March 17, 2016)(DCF), drafted by ALJs Balter and Cochrane, respectively. Although those decisions involved home-schooled children, the Secretary's rationale is applicable to this case as well.

### **CONCLUSIONS OF LAW**

1. The Department correctly denied childcare authorization for the petitioner's school aged child LS for hours that coincide with the typical public school day in the petitioner's district.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

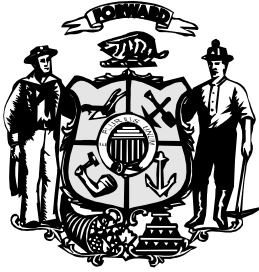
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 6th day of May, 2016

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 6, 2016.

Marathon County Department of Social Services  
Child Care Benefits

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